IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5255 of 1987

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDRASINH S MAHIDA - Petitioner(s)

Versus

DIVISIONAL CONTROLLER - Respondent(s)

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Appearance :

MR MUKESH H RATHOD for Petitioner No(s).: 1.
MS RESHAM MEHTA for MR HARDIK C RAWAL for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 21/06/2005

ORAL JUDGMENT

1. This petition is directed against the award dated 17.09.1986 passed in Reference No. 464 of 1984 by the Labour Court, Baroda whereby the Labour Court while exercising powers under Section 11(A) has granted reinstatement without back wages.

2. The short facts of the case are that the petitioner was working as a Driver at Panigate Depot of Baroda Division. The petitioner was dismissed from the service on 27.12.1980 on the ground of absenteeism. The allegation against the petitioner was that the petitioner remained absent without sanctioning leave. In view of the aforesaid misconduct, ex-parte departmental inquiry was held against him, which resulted in dismissal of service of the petitioner.

2.1. In the year 1981, an Appeal was preferred before the respondent Corporation, which came to be rejected. Being aggrieved by the order of dismissal, the petitioner raised an industrial dispute, which was ultimately referred to the Labour Court, Baroda for adjudication. The Labour Court, Baroda, after appreciating the material produced before it, allowed the said Reference with the aforesaid direction. Hence, this petition.

3. Mr. Rathod learned advocate for the petitioner has submitted that though the petitioner was entitled for the back wages, the Labour Court has erred in not granting the back wages on the ground of delay. He has further submitted that since gainful employment of the petitioner for the interim period was not proved by the respondent, the Labour Court ought to have awarded full back wages for the said period.

4. Ms. Mehta learned advocate for the respondent has submitted that the petitioner had remained absent from duty during the period from 18.09.1980 to 13.10.1980, without

giving any leave report and without getting leave sanctioned. Thus the Labour Court was justified in not granting back wages to the petitioner.

5. I have heard the learned advocates for the respective parties. Having perused the materials produced before it, it transpires that the petitioner had remained absent from duty during the period from 18.09.1980 to 13.10.1980, without giving any leave report and without getting the leave sanctioned. Apart from that, the petitioner has raised the dispute at a belated stage, since the petitioner was dismissed from service in the year 1980 and his First Appeal was rejected in the year 1981. Therefore, I am in complete agreement with the reasonings given by the Labour Court in its impugned order and find no reason to interfere in this petition.

6. In above view of the matter, I am of the opinion that the Labour Court was justified in directing the respondent Corporation to reinstate the petitioner in service but without any back wages. Hence, this petition is dismissed. Rule is discharged. Interim relief if any, stands vacated. No costs.

[K.S. JHAVERI, J.]

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